his marriage due to the injuries and change of character, I do not in the circumstances regard it as something calling for a specific award.

The total sum of my award for the plaintiff under the quantum of damages amounting to $49,834.00 is made up as follows: —

1.	Special damages: - - - -		$8,450.00
2.	General damages:		
	(a) For pain and suffering.	$ 3,000.00	
	(b) Loss of future earnings.	15,384.00	
	(c) Brain injury including the effects thereof.	15,000.00	
	(d) Fracture of the mandible including the effects thereof.	5,000.00	
	(e) Facial injuries.	3,000.00	41,384.00
	Total:		$49,834.00

3. Costs of suit less $200, the cost to be paid by the plaintiff for the amendment of the statement of claim.

Order accordingly.

Solicitors: *Dato' Balwant Singh & Co.; Shearn, Delamore & Co.*

CHAN KOK KIANG v. TAN SWAN CHENG & ANOR.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Kulasekaram JJ.) July 6, 1970]

[Singapore — Civil Appeal No. 21 of 1969]

Negligence — Lorry overtaking cyclist — Duty on driver of lorry.

Practice and Procedure — Amendment of appeal records — Practice to be followed.

This was an appeal against the decision of the High Court in an action for damages on behalf of the estate and for the dependants of a deceased cyclist, who was knocked down by a lorry and sustained injuries which resulted in his death. At the hearing of the appeal counsel for the appellant moved for an order that the appellant be at liberty to amend the record of appeal by adding a note taken by counsel at the hearing of the action in the notes of evidence. The note which purported to be a record of what was said by the trial judge, had been taken by counsel at the hearing but neither the trial judge nor the counsel for the respondents/plaintiffs at the trial was able to remember what was said. The application was dismissed. It was argued on the appeal that the learned trial judge was wrong in coming to the conclusion that the appellant/defendant was negligent in failing to observe the presence of the cyclist on the road or if he did in failing to give the cyclist a sufficiently wide berth so that the appellant/defendant's negligence was the cause of the injuries suffered by the cyclist. It was further submitted that the trial judge was not entitled to draw the inference that the driver of an overtaking vehicle is negligent solely and simply from the fact that the overtaking vehicle collided with the overtaken vehicle.

Held, dismissing the appeal: while it is true that no inference of fact or law adverse to the driver of an overtaking vehicle could be drawn solely and simply from a collision between the overtaken and overtaking vehicles, there was in this case ample evidence, which was not disputed, for the trial judge to draw the inference that the appellant failed to give the cyclist a sufficiently wide berth and therefore the learned trial judge was correct in finding that he was negligent.

On the motion to amend the appeal record the court said:- "If it is intended that any note taken by counsel at the trial of an action be accepted as part of the notes of evidence for use by an appellate court, it is desirable that the trial judge and counsel for the other party or parties should be supplied at the earliest possible opportunity with a copy of the note so made for correction or acceptance or otherwise. If the trial judge and counsel for all parties agree to the original or a corrected version then such agreed original or corrected version can properly be included in the record of appeal as part of the notes of evidence. Where no version can be so agreed, then in any application for leave to include the note made or taken by counsel at the trial, the affidavit in support of the application ought to set out the circumstances under which the note was made or taken and the steps taken to obtain the agreement of all concerned together with all correspondence relating to the attempt to obtain such agreement."

Case referred to:-

(1) *Baker* v. *Market Harborough Industrial Co-operative Society Ltd.* [1953] 1 W.L.R. 1472.

COURT OF APPEAL.

Ian S. Hill Q.C. (*G. S. Hill* with him) for the appellants.

H. E. Cashin for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the court): A cyclist riding along Balestier Road, while being overtaken by a timber lorry 31' 4" long by 6' 8" wide, was knocked down by the lorry and sustained injuries which resulted in his death. The deceased's personal representatives sued the driver of the lorry for damages on behalf of the estate and for the benefit of the dependants.

At the trial of the action an eye-witness gave evidence that as the deceased cyclist was cycling along Balestier Road the defendant's lorry driven by the defendant in overtaking the cyclist knocked him down. This evidence was accepted by the trial judge and indeed was not denied by the defendant. The defendant said that he saw the cyclist ahead of him attempting to move towards the right, that he sounded his horn whereupon the cyclist turned back and held a straight course. He drove on, overtook the cyclist and after he had overtaken the cyclist he heard a bang, felt a jerk in the back portion of his lorry and applied his brakes. He said that the cyclist was travelling 11 or 12 feet from the edge of the road and he was driving his lorry on a straight course before and after overtaking the cyclist and that when overtaking the cyclist there was a gap of three or four feet between the cyclist and his lorry.

The trial judge disbelieved the defendant's evidence that he saw the cyclist attempting to make a right turn and that he overtook the cyclist with a three or four feet gap between them. He found that the defendant was negligent in that he either failed to observe the presence of the cyclist on the road or if he did he failed to give him a sufficiently wide berth. However, he held the cyclist partly to blame, to the

extent of one-fifth, because the cyclist should have used an available cycle track and should not have been cycling on the road.

The defendant appealed against the judgment of the trial court but there was no cross-appeal by the plaintiffs on the finding of contributory negligence by reason of the failure of the cyclist to use the cycle track. While counsel for the defendant was making his final address, he was asked by the trial judge to address the court on the question of negligence, on the assumption that the trial judge did not accept the evidence of the eye-witness. The trial judge made no note of what he said nor did counsel for the plaintiffs but counsel for the defendant after he had completed his address to the court "took down in writing what the judge said earlier as best as I could remember". The note as taken runs thus: —

"You don't worry about plaintiff's witness. Assume I do not accept his evidence. Address me whether there is negligence on the defendant's evidence alone.

I say if there is a collision between the overtaking and overtaken vehicle there is a presumption of negligence against the overtaking vehicle — that is the law. I shall give you adjournment if you want to look up".

Before the hearing of the appeal counsel for the appellant/defendant moved this court for an order that the appellant be at liberty to amend the record of appeal by adding the above note taken by counsel at the hearing of the action in the notes of evidence. The motion was supported by an affidavit of Mr. M. Coomaraswamy who was counsel for the defendant at the trial and who made the above note. Mr. Cashin who was counsel for the respondents/plaintiffs at the trial made an affidavit in reply stating that he was unable at this length of time (approximately 10 months) from the occasion itself to remember *verbatim* exactly what was said. The trial judge was asked by this court as to the accuracy of the note made by counsel for the defendant but he was also unable to remember exactly what he had said.

It was submitted to us by counsel for the appellant that this court should accede to his motion as the only contemporaneous note of what the trial judge said was the one made by the defendant's counsel at the trial and its accuracy was not denied by the trial judge and by counsel who appeared for the plaintiffs at the trial. We dismissed the motion. It is not the practice of the courts in Singapore to have a *verbatim* shorthand note taken of the entire proceedings in court. If it is intended that any note taken by counsel at the trial of an action be accepted as part of the notes of evidence for use by an appellate court, it is desirable that the trial judge and counsel for the other party or parties should be supplied at the earliest possible opportunity with a copy of the note so made for correction or acceptance or otherwise. If the trial judge and counsel for all parties agree to the original or a corrected version then such agreed original or corrected version can properly be included in the record of appeal as part of the notes of evidence. Where no version can be so agreed, then in any application for leave to include the note made or taken by counsel at the trial, the affidavit in support of the application ought to set out the circumstances under which the note was made or taken and the steps taken to obtain the agreement of all concerned together with all correspondence relating to the attempt to obtain such agreement.

In the present case, having regard to the fact that the application was made at a very late stage in the proceedings and the fact that the trial judge and counsel for the plaintiffs at the trial were unable to say whether or not the note made by Mr. Coomaraswamy was an accurate *verbatim* note of what the trial judge had said at the trial, we thought it right that the application should be dismissed.

At the hearing of the appeal, Mr. Ian Hill, counsel for the appellant, argued that as the eye-witness had been totally discredited at the trial so that his evidence must have been rejected by the trial judge and notwithstanding the fact that the trial judge had also rejected the evidence of the defendant lorry driver, the trial judge was wrong in coming to the conclusion that the defendant was negligent in failing to observe the presence of the cyclist on the road or if he did in failing to give the cyclist a sufficiently wide berth so that the defendant's negligence was the cause of the injuries suffered by the cyclist. His submission was that the trial judge was not entitled to draw the inference that the driver of an overtaking vehicle is negligent solely and simply from the fact that his overtaking vehicle collides with the overtaken vehicle. The burden being on the plaintiffs to prove that the defendant is negligent, the trial judge ought, so he submitted, to have dismissed the action. Mr. Ian Hill's other submission was that if on the evidence before him the trial judge was unable to say how the collision occurred then he ought to have held both the cyclist and the lorry driver equally to blame, relying on the oft-cited case of *Baker* v. *Market Harborough Industrial Co-operative Society Ltd.*[1]

On the first submission, while we did not disagree with counsel's submission that no inference of law or fact adverse to the driver of an overtaking vehicle can be drawn solely and simply from a collision between the overtaken and overtaking vehicles, we were of the opinion that there was ample evidence, which was not disputed, for the trial judge to draw the inference that the appellant failed to give the cyclist a sufficiently wide berth. The appellant had testified that he saw the cyclist keeping a straight course and that he then overtook the cyclist giving him a berth of 3 or 4 feet. The trial judge found that the appellant was not speaking the truth when he said he gave the cyclist a berth of 3 or 4 feet. It follows, in our view, that the trial judge must have found as a fact that the defendant in overtaking the cyclist did so with a gap of less than three feet between the cyclist and the nearside of his lorry. Having regard to the fact that the appellant was overtaking a cyclist, that the lorry was 31' 4" long by 6' 8" wide and was a timber carrying lorry, the back portion of which was a trailer, that the cyclist was keeping a straight course as the lorry was about to overtake him, that the brake marks left by the lorry after the collision indicated that the lorry also kept a straight course while overtaking, we were of the opinion that it was not wrong for the trial judge to infer that the collision was caused by the failure of the appellant to

give a sufficiently wide berth when overtaking the cyclist.

We accordingly dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Murphy & Dunbar.*

RANJIT SINGH v. JASWANT KAUR

[F.C. (Azmi L.P., Suffian and Ali F.JJ.) July 22, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. 20 of 1970]

Family Law — Maintenance — Application by wife for maintenance — Offer by husband to take back wife — Whether, wife has good grounds for refusing to go and live with husband — Married Women and Children (Maintenance) Ordinance, 1950.

This was an appeal against the decision of the High Court, which had allowed an appeal from a magistrate's court and had ordered the appellant to pay maintenance to the respondent.

Held, dismissing the appeal: in this case there was no evidence to show that the wife had deserted the husband or had refused to go and live with him before the proceedings commenced. The husband could not have been serious or genuine in his offer to take the wife back after the proceedings had commenced and in the circumstances the wife had good grounds for refusing to go and live with him.

Case referred to:-

(1) *Cheong Hooi* v. *Tee Ngi* [1958] M.L.J. 83.

FEDERAL COURT.

Karpal Singh for the appellant.

Joginder Singh for the respondent.

Azmi L.P.: Ranjit Singh (husband) and Jaswant Kaur (the wife) were married on 20th April 1957 in accordance with Sikh rites and customs. Two children were subsequently born of the marriage, namely a son on 20th April 1958 and a daughter on 20th February 1959. The wife swore a complaint in the magistrate's court against her husband for failing to maintain her and her two children. The learned magistrate ordered the husband to pay maintenance for the children but dismissed the wife's claim for maintenance.

According to the evidence of the wife, 3 months after the marriage he joined the police field force and worked in Kuala Lumpur and he used to visit her at her house once a week. This went on for about 7 months. During her stay in Kuala Lumpur her parents and brother supported her and he never maintained her. About a month before the birth of the second child he was posted to Ipoh. He never visited her for about 13 months. In April 1960 she went to Ipoh and stayed in the married men's quarters but apparently was not living together with him because according to her he only came once in two or three days to change his clothes. Where was he then staying? Perhaps with his parents who were then living in Ipoh. Finally he sent her back to her parents' house in 1960 because according to him he had to go into the jungle on duty and this according to the wife was not true. In June 1960 he was transferred to Kulai and on the way dropped at Kuala Lumpur to see her. From that time until 1963 he only visited her once. He refused to take her back and talked about separation. After 3 years in Kulai he was transferred to Seremban where he stayed for 2 years and from there he was transferred to Ipoh for a month and then to Alor Star. Her story was that though she made attempts to see him he refused to see her. There were also attempts by her relations to bring them together but that also failed. Finally in 1968 she received a letter from his lawyer Exh. P. 1. In that letter the solicitor informed her that according to her husband "there has been a total and complete breakdown of the marriage and that there was not even the remotest possibility of reconciliation and in the circumstances, asked her if she would agree to enter into a deed of separation that would for all intents and purposes dissolve the marriage." She refused to comply with the request and soon after laid this complaint against him for maintenance.

In answer to cross-examination she admitted that from April 1957 up to June 1960 their relationship was good and they lived as husband and wife. But however, she expressed very strongly that she would not now go back to him even if he still wanted her because according to her she had suffered enough. She said she took this action because of Exh. P. 1.

Chief inspector Balwant Singh, who knew the parties, though related to neither of them, said that the husband was working with him from April to November 1959. The husband told him in April 1959 about his matrimonial relationship. Subsequently when he heard from the wife's brothers that the husband had left her he tried to reconcile them, but when he asked the husband to take his wife back he refused. He made several attempts but they were fruitless.

Another witness Chandra Singh P.W. 2 said that in 1960, he visited her in the police barracks in Ipoh on three occasions and the husband was not at home. She appeared to be feeling lonely as the husband had not returned home. He gave her vegetables which she needed as a diet.

The wife's brother Jaswant Singh also gave evidence. He told of his attempt to bring the couple back together.

The appellant also gave evidence. He admitted that at the beginning of the marriage everything was quite all right though there was some misunderstanding between them. He used to visit her when he was in Kuala Lumpur. When he was transferred to Ipoh she stayed with him in the barracks. When he was sent to Kuala Lumpur for training for a month at the police depot she refused to go with him. When he returned to Ipoh and stayed with her in the same house he discovered that a man named Hira Singh used to pay regular visits to the house. He told his wife that he did not want this and they quarrelled. Then she returned to Kuala Lumpur and refused to live in Ipoh any more. When he went to see her off at the railway station, she told him that she could get him transferred